

**Opening Remarks of
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**House Committee on Small Business
Hearing
“Export Control Reform: Challenges for Small Business?”**

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Thank you, Chairman Chabot and Ranking Member Velázquez.

The purpose of export controls is to create an enforceable regulatory net over the export, reexport, and transfer by foreign and domestic persons of specific types of commodities, software, technology, and services to specific destinations, end uses, or end users for various national security, foreign policy, and other reasons. Unless those affected by the regulations understand them, they cannot comply with them, and the national security and foreign policy objectives of the controls will not be met. This is why outreach and education, particularly of small- and medium-sized companies, is a vital part of our mission. Hearings such as this and your continued interest in the topic help us considerably. So, thank you again.

As with most areas of regulation, export controls are inherently complex. Some items and activities warrant strict controls, many warrant few controls, and others warrant a mix depending on the circumstances of a particular transaction. Not all destinations, end uses, and end users are of equal concern. Foreign policy concerns and priorities change over time. Technologies evolve. Newly developed technologies can be extremely sensitive; others morph from predominant military use to something that is in normal commercial use. Controls are needed on end uses and end users of concern even if the items involved are widely available or unsophisticated. Subtle differences in fact patterns or technical characteristics of a product can have significantly different outcomes in the scope of control. Most controls reflect compromises in wording and scope reached by dozens of like-minded countries in multilateral export control arrangements. All reflect consensus views of the law enforcement, national security, foreign policy, and economic security equities of multiple U.S. government agencies. Finally, the controls are an aggregation of decades of individual statutory and regulatory decisions spread out over multiple government agencies written and edited by hundreds of different individuals that have accreted into the complex system we have today.

In the abstract, there are, in the extreme, two ways to make the system vastly more simple -- require a license everywhere, all the time, always for all items or all listed items or don't require a license at all unless specifically informed by the government. The former, of course, would impose a massive and devastating regulatory burden on exports and require the creation of a U.S. Government export control infrastructure far larger than what we have today. The latter would not satisfy the national security and

foreign policy objectives of the controls. There is thus an inherent tension in export controls between simple, broad regulations that control too much and impose an excessive licensing burden, on the one hand, and tailored, detailed controls that control just the right amount but are initially more complex to work through, on the other. This is the daily challenge for export control policy makers -- deciding where the lines should be drawn. This Administration has focused on trying to tailor the controls to reduce the overall regulatory burden as much as possible without compromising the national security and foreign policy objectives of the controls. This means that education and outreach are vital to the success of the effort.

Although there are many U.S. government agencies that control the export of items in one form or another, the two agencies with the largest portion of the responsibility are represented here before you today -- the Commerce Department's Bureau of Industry and Security (BIS), which administers the Export Administration Regulations (EAR), and the State Department's Directorate of Defense Trade Controls (DDTC), which administers the International Traffic in Arms Regulations (ITAR). I can assure you that both BIS and DDTC management and staff are committed to administering their controls in the least burdensome way possible without impairing the national security and foreign policy objectives of the controls.

These are not just words. The Obama Administration launched in 2010 the most fundamental reform of the system since World War II. The reform focuses our controls on those items that must be rigorously protected while ensuring that our controls do not drive foreign customers to foreign suppliers and U.S. companies offshore. Two significant parts of this plan are nearly complete -- (1) the transfer of less sensitive military and commercial satellite items from the ITAR to the EAR to allow for more flexible controls over trade with allied countries and (2) the update and harmonization of key EAR and ITAR terms and principles to reduce inherent regulatory burdens. Once companies learn and adapt to the new structures -- and we recognize that the transition process can be difficult -- the regulatory compliance obligations, particularly for small- and medium-sized companies, will generally be materially reduced.

First, the revisions identify more clearly what is actually controlled. For too long, determinations about what was and was not controlled, and which list governed an item, were, as a practical matter, more a function of lore rather than law. Over the last six years, we have engaged in a massive industry outreach effort to ask for help in re-writing most of the controls in ways that industry can better understand. Every change was proposed for comment -- some more than once -- to ensure that we got it as clear as possible.

Second, the rebuilding of the control lists moved -- but did not de-control -- hundreds of thousands of items, mostly parts and components predominantly manufactured by small businesses, and related technologies from State's regulations to the more flexible Commerce regulations. The transfer to Commerce's regulations of these less sensitive

military and commercial satellite and space items eliminates many regulatory burdens. For example, for the items that have moved to the Commerce list from the State list:

- There are no registration requirements. This eliminates the expense of paying to register and the burden and expense of preparing and submitting these forms or fees. For those companies with a limited product line where all their items have transferred, this allows for a significant reduction in burden and cost.
- There are no fees for submitting license applications. For small companies exporting products with low margins, this is a significant advantage.
- There are no requirements to get permission merely to manufacture or to market abroad. The Commerce regulations, of course, still control the flow of goods, technology, and software, but with far shorter and simpler forms than State's Manufacturing License Agreements and Technical Assistance Agreements. Most Commerce authorizations also have significantly fewer conditions and regulatory burden requirements than do State's agreements.
- There are no *per se* requirements to have a purchase order for each application. This means that an exporter can resolve its licensing obligations before knowing whether it has a sale, which saves time. It also dramatically reduces the total number of applications and licenses needed over the duration of a regular relationship with a foreign customer that will involve multiple purchase orders.
- Except in situations involving military and satellite items destined to countries subject to embargoes, the Commerce rules generally do not have a "see through" rule. This is the rule that means that an item is always subject to U.S. jurisdiction even when incorporated into foreign-made items or uncontrolled items. For trade with non-embargoed countries, the Commerce regulations have a *de minimis* rule, which means that if the value of controlled US-origin content is less than 25%, then the foreign-made item is generally not subject to U.S. jurisdiction. This change largely eliminates the incentive for foreign companies in non-embargoed destinations to design-out U.S. origin items, particularly parts and components. It thus bolsters the health and competitiveness of the U.S. industrial base because those in non-embargoed countries will generally no longer need to second source parts and components elsewhere.
- Most importantly, the Commerce regulations have multiple license exceptions that do not exist in the State regulations, and which State is prohibited by law from creating. In most cases, these exceptions allow exporters to ship their products to allied and other non-embargoed countries without the need to apply to the government for a license, assuming the parties are willing to abide by various recordkeeping and other conditions to help ensure compliance with the exceptions. One of the exceptions developed as part of the reform effort, License Exception Strategic Trade Authorization (STA), allows for significant

reductions in regulatory burdens associated with trade with NATO and other close allies. It enhances our national security by making our systems more interoperable.

For all these reasons and others, the Export Control Reform effort helps small businesses, particularly defense exporters, by increasing the security of supply from small companies that are the second and third tier suppliers in the defense industry, facilitating timely and reliable supplier relationships between U.S. exporters and their foreign customer base, and enhancing their long-term health and competitiveness. These sectors include aerospace, military vehicles, marine vessels, space, satellites, and electronics.

There are many other actions Commerce has taken to make compliance for small and medium-sized companies easier. For many years, the Departments of Commerce, State, and Treasury have maintained eleven separate lists of entities that are sanctioned for various national security and foreign policy reasons, including for illegally exporting arms or other items, violating US sanctions, engaging in terrorism, and trafficking narcotics. If a company or individual appears on the list, U.S. firms must do further research into the individual or company in accordance with the administering agency's rules before doing business with them. To ease this review process, an interagency task force created the Consolidated Screening List (CSL) in 2009 so that all eleven lists can be accessed in one place. Further, in July 2015, the Department of Commerce created a new web search tool to help US companies easily search the CSL. This CSL web search tool has "Fuzzy Name Search" capabilities enabling companies to search the CSL without knowing the exact spelling of an entity's name. This is particularly helpful when searching for names on the CSL that have been transliterated into English from non-Latin alphabet languages. All of these actions taken together have greatly benefitted U.S. companies by reducing the time needed to search all eleven lists and by providing a free alternative to costly third-party software vendors.

We also revised a number of license exceptions, such as those for temporary exports, exports of replacement parts, and exports to governments in order to broaden their scope and to make them less burdensome. They still need work but they are better. We've increased the license validity periods and greatly expanded, as a matter of practice, the flexibility of our licenses so that they can be tailored to specific transactions. We revised and significantly reduced the support document requirements – requirements that were among the most complicated sections of the EAR. We have simplified the license conditions on approved licenses.

As evidence of how important education and outreach are to our bureau, I would like to give you some representative examples. In Fiscal Year 2015, we estimate that our outreach programs resulted in over 100,000 interactions with U.S. and foreign persons. We conducted over 350 events for industry, including the weekly teleconferences that I host on specific Export Control Reform topics, the seminars that are held throughout the country and overseas, the industry group meetings at which we speak, our Technical

Advisory Committee meetings, the small- and medium-sized business conferences that we attend, and the webinars we produce. We conducted outreach events in 18 states and ten foreign countries. We've conducted or participated in 51 seminars in the United States.

Our seminars and online services are an effective way for small- and medium-sized exporters to understand their responsibilities as members of the regulated community. We have published several blog posts on the Commerce Department website on how export control reform benefits small businesses and entrepreneurs, and we worked with the Small Business Administration (SBA) to share this information through their social media networks. We have added over 6,700 new users to SNAP-R, our electronic license application system, bringing the total number of users to over 36,400. The on-line interactive decision tools we have developed received over 33,000 hits. The BIS website has additional tools and resources in our Exporter Portal. In addition, our Office of Exporter Services counseling line provides exporters with free counseling via telephone. Our export counseling staff has answered over 33,000 telephone and e-mail inquiries.

We have partnered with SBA on a number of efforts. For example, BIS Under Secretary Eric Hirschhorn conducted a training session for SBA international trade staff from 68 district offices and 20 export assistance centers across the country. The training was designed to help SBA staff identify companies who may be covered by export control regulations and direct them to BIS resources. Through such sessions, BIS utilizes SBA's network to help inform small- and medium-sized businesses.

BIS has also collaborated with SBA and other organizations representing the interests of small and medium-sized enterprises at a number of conferences. At our annual Update conference, we partnered with SBA, the National Small Business Association, the Maryland Small Business Development Center (MDSBDC), and the Minority Business Development Agency. In 2015, BIS sent outreach, regulatory policy, and compliance staff to the Association of Small Business Development Centers' (ASBDC) annual conference in San Francisco and counseled approximately 150 SBDC advisors. BIS representatives spoke at four programs sponsored by ASBDC in collaboration with the Bureau of the Census to educate exporters and freight forwarders on properly reporting required information in the Automated Export System. As a result of this partnership, ASBDC has increased the number of export control-related workshops and exhibitors at its annual conference, and begun to offer a certificate in international trade and related-regulations to its membership.

BIS has held open fora on SME comparative trade issues and participated in state-level trade conferences to facilitate trade. In 2015, the President's Export Council Subcommittee on Export Administration, one of BIS's industry advisory committees, prioritized its work with the National Institute of Standards and Technology's ExportTech program, a national export assistance program that targets small- and medium-sized

businesses. BIS representatives participated in a webinar sponsored by FedEx that was intended to reach FedEx's small- and medium-sized exporting customers.

For this year, we plan to sponsor or co-sponsor 23 seminars, including the annual Update conference and the West Coast Export Control Forum, in thirteen different states. We will develop and conduct many new webinars and will post additional new educational videos on our website. BIS staff, including the Under Secretary and I, will continue attending as many compliance conferences and company training events as possible. I will also continue to answer, every Wednesday at 2:30 over an open, *free* conference call, every question that comes into BIS. These calls have been highly popular, particularly with small- and medium-sized companies, which generally do not have large legal teams or compliance staffs.

In addition to the short- and near-term rationalization benefits for small- and medium-sized companies, this work has established the framework for what could be an even more significant rationalization and simplification of the system, which is the creation of a common set of export control regulations and then, eventually, with the help of Congress, a single export licensing agency that would administer a single set of regulations with a single list of controlled items. In addition, now that the internal work on a common IT system for interagency review of Commerce license applications is almost complete, we're renewing the effort we started a few years ago to complete a common Internet-based license application portal for both Commerce and State and a single license application form common to both the EAR and the ITAR. We will need a lot of industry input and advice as we move to this next step to make sure it is modern and effective.

Additionally, under ECR, the President established the Federal Export Enforcement Coordination Center, to which the Commerce Department contributes several personnel. Among its mandates, the Center will coordinate law enforcement public outreach activities related to U.S. export controls. In the current U.S. export controls system, there are several federal regulatory (including Commerce's BIS and State's DDTC) and enforcement agencies (BIS' Office of Export Enforcement and U.S. Immigration and Customs Enforcement 's Homeland Security Investigations), involved in outreach to industry often targeting the same exporters or industry sectors, leading to confusion regarding proper reporting or disclosure to government agencies. Coordination of these efforts will result in a more seamless, efficient, and holistic U.S. government approach to private sector outreach to include small businesses.

In conclusion, the ECR goal of creating a new export control system defined by what we called the "Four Singularities" – a single control list, a single licensing agency (SLA), a single IT, and a primary export enforcement coordination agency was structured with the issues of small- and medium-sized companies in mind. We recognized that small firms account for more than 99 percent of all employers, 98 percent of all exporters, and a third of the annual value of U.S. exports. They are the engine of technological innovation and it is thus in our national and economic security interests to ensure that

these small businesses can successfully navigate the nation's export control system. We understand that getting used to the new system can be a burden. This is why we have stretched the implementation of the changes out over a number of years, with significant delayed effective dates and multiple opportunities for industry to comment on the proposed rules years before they became effective. I am completely confident, however, that once the essence of the reform effort is in place and companies have adapted to it, it will properly implement the national security and foreign policy objectives of the controls in the least burdensome way possible. I look forward to your ideas, suggestions, and help for this part of our mission. Thank you.